IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

R.S.A No.2649 of 2003
Date of Decision:- 05.09.2006

Balwinder Singh ....Appellant.

through
Mr.B.S.Bhalla, Advocate

vs.

Modan Singh ....Respondent

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This regular second appeal has been preferred by the defendant-appellant against whom a suit for declaration to the effect that the respondent-plaintiff continues to be owner in possession of the subject land and that the alleged sale deed scribed on 4.7.1991 and registered on 15.7.1991 is null and void, has been decreed by both the Courts.

Modan Singh, respondent-plaintiff agreed to sell a part of his land in favour of the appellant and for the said purpose, stamp-papers were purchased on 4.7.1991 and the sale deed was also scribed. Alleging that he was pressurised to thumb mark the draft sale deed without payment of any sale consideration which the appellant promised to pay in the village and got the sale deed registered though he never appeared before the Sub-Registrar, the respondent-plaintiff filed the present suit. He also averred that even before registration of the sale deed, he moved an application

before the Sub-Registrar, Moga expressing his apprehension that the sale deed which he does not want to execute may still be got registered by impersonating him. However, subsequently the respondent-plaintiff came to know that the sale deed was actually got registered.

The suit was contested by the appellant-defendant primarily on the plea that the sale deed in question is a 'registered document' and is presumed to be validly executed and that out of the total sale consideration of Rs.23,750/-, Rs.20,000/- had already been paid to the respondent-plaintiff whereas the balance amount of Rs.3750/- was paid to him before the Sub-Registrar and, thus, allegations in the suit are totally false.

On the basis of the pleadings, the trial Court framed the following issues:-

> "(1) Whether the sale deed scribed on 4.7.1991 and registered on 15.7.1991 is illegal null and void and is liable to be set aside on the grounds mentioned in the plaint?OPP
>
> (2) Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD
>
> (3) Whether the plaintiff is entitled for declaration prayed for?
>
> (4) Relief.

Both the Courts have concurrently held that the sale deed scribed on 4.7.1991 and registered on 15.7.1991 was not validly executed.

The following reasons have been given by both the Courts to arrive at the aforementioned conclusion:-

(i)The appellant (Balwinder Singh) appeared as PW-4 on

18.11.1992 in a civil suit titled as Balwinder Singh vs. Bachittar Singh and made the statement (Ex.PW-6/A) in which he claimed that a sum of Rs.20,000/- out of the total sale consideration were paid to the respondent-plaintiff "at his home."

(ii)In the present suit, Balwinder Singh-the appellant has deposed that Rs.20,000/- were paid to respondent-plaintiff "at the seat of the deed writer." Some what similar statement has been made by other defendant's witnesses also;

(iii) No steps were taken by the Sub-Registrar to identify the executant of the sale deed though mandatorily required under Section 32 of the Indian Registration Act, the Sub-Registrar has also not recorded his satisfaction in respect of identification of the executant.

(iv)Mohinder Singh (Lambardar) and Niranjan Singh (Sarpanch), both have deposed against the appellant and have denied attestation of the sale deed on 15.7.1991 by them though as per the Certificate/Endorsement Ex.P1/A, the Sub-Registrar proclaims that the respondent-plaintiff was identified before him by none else than Mohinder Singh (Lambardar);

(v) The signatures of Mohinder Singh (Lambardar) were struck off from the sale deed which further establishes that the respondent-plaintiff neither appeared before the Sub-Registrar nor was identified by the said Lambardar;

(vi)The deposition made by the respondent-plaintiff that his

thumb impressions were obtained on the back leaf of Ex.P1 by the deed writer himself and he never appeared or fixed his thumb impressions before the Sub-Registrar, inspires confidence;

(vii)The respondent-plaintiff's version has been duly supported by the neutral and impartial witnesses like Mohinder Singh (Lambardar), Niranjan Singh (Sarpanch) and S.S.Sandhu, Advocate whereas those who deposed in favour of the appellant are his close relations and are, thus, interested witnesses.

The above-quoted reasons speak for themselves. True it is that a registered document carries presumption of its valid execution, however, such presumption is rebuttable though by producing strong evidence. From the concurrent findings of fact there remains no doubt that the respondent-plaintiff has successfully discharged the heavy onus lying on him and has proved that execution of the alleged sale deed is a sham transaction.

Be that as it may, both the Courts have concurrently found that:-

(i)the sale consideration never passed on to the respondent-plaintiff;

(ii)he never appeared before the Sub-Registrar;

(iii)his thumb impressions on the registered document were obtained by the deed writer;

(iv)his presence before the Sub-Registrar is not identified by any witness; and

(v)the alleged witness, who identified the respondent-plaintiff

before the Sub-Registrar, has deposed against the appellant.

These are pure and simple findings of fact, warranting no interference by this Court in this regular second appeal as the same do not give rise to any substantial question of law. The regular second appeal is accordingly dismissed.

September 05, 2006 **(SURYA KANT)**
poonam **JUDGE**